



भारत का राजपत्र

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NEW DELHI, SATURDAY, MAY 20, 2000/VAISAKHA 30, 1922

इस भाग में विन्यु पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के क्षम में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केंद्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासन को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निवाचिन आयोग

आदेश

नई दिल्ली, 7 अप्रैल, 2000

आ. अ. 49.—यतः निवाचिन आयोग का समाधान हो गया है कि लोकसभा के साधारण निवाचिन 1998 जो नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट निवाचिन-क्षेत्र से हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निवाचिन लड़ने वाला प्रत्येक अधिकारी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदीन बनाए गए नियमों द्वारा अवैधिक उक्त सारणी के स्तम्भ (4) में यथा दर्शित अपने निवाचिन व्यक्तियों का लेखा दाखिल करने में असफल रहा है;

और यतः उक्त अधिकारियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निवाचिन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायांचित्य नहीं है;

अतः अब, निवाचिन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है;

सारणी

क्र. सं. संसदीय निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहृता का कारण	
1	2	3	4
1. 12-बंगलौर उत्तरी	श्री बाबू अबेल, नं. 22, कुमारन हाई स्कूल के पास, राममूर्ति नगर, बंगलौर—16	निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे।	
2. —वही—	श्री शिवचन्नाबासप्पा, नं. 2, कोलानडप्पा गार्डन, अनेपालया, अयुडुगोडी पोस्ट, बंगलौर—30	—वही—	
3. —वही—	श्री बी. एन. श्रीनिवास, बाबू साब पालया, बनसावडी पोस्ट, बंगलौर—43	—वही—	

[सं. 76/कर्ना.-लो. स./98]

आदेश से,

बाबू राम, सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th April, 2000

O.N. 49.—Whereas, the Election Commission is satisfied that the contesting candidates specified in column (3) of the Table below of the General Election to the House of the People, 1998 from the Constituency specified in column (2) against his/her name has failed to lodge an account of his/her election expenses as shown in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder.

And whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice and the Election Commission is satisfied that he/she has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or the Legislative Assembly or Legislative Council of States for a period of 3 years from the date of this order.

TABLE

Sl. No.	No. & Name of the Parliamentary Constituency	Name of the contesting candidates	Reason for disqualification
1	2	3	4
1.	12-Bangalore North	Shri Babu Abel, No. 22, Near Kumaran's High School, Ramamurthynagar, Bangalore-16.	Failed to lodge the account of election of expenses.
2.	-do-	Shri Shivachannabasappa, No. 2, Kolandappa Garden, Anepalya, Audugodi Post, Bangalore-30.	-do-
3.	-do-	Shri B.N. Srinivas, Babu Sab Palya, Banasavadi Post, Bangalore-43.	-do-

[No. 76/KT-HP/98]

By Order,
BABU RAM, Secy.

आदेश

नई दिल्ली, 7 अप्रैल, 2000

आ. अ. 50.—यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट निवाचित-क्षेत्र से हुए लोकसभा के साधारण निवाचित 1998 के लिए जो स्तम्भ (2) में विनिर्दिष्ट निवाचित-क्षेत्र से हुए है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निवाचित लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायीचित्य नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम कीधारा 10—क के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निर्रहित घोषित करता है:—

सारणी

क्रम सं.	निवाचित-क्षेत्र की क्रम सं. और नाम	निर्वाचित लड़ने वाले अभ्यर्थी का नाम और पता	निर्रहित का कारण
1	2	3	4
1.	21—चित्तूर	श्री मनोहर, 4—2357, इश्वरम ग्राम व पो., चित्तूर मण्डल व जिला,	निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे।
2.	24—हनुमुर	श्री बी. एन. आदिनारायण गुप्ता, 4-16, गांधी बाजार, माडाकर्सिरा।	—वही—
3.	—वही—	श्री बोया नरसिंहलु, मारवापल्ली (पोस्ट), पेनुकोंडा।	—वही—
4.	—वही—	श्री एस. राजा शेखर, अम्मावारीपल्ली गुट्टुर (पोस्ट), पेनुकोंडा (म.)	—वही—
5.	25—अनन्तपुर	श्री आदिल बाषा, 28/73, बोरा स्ट्रीट, ओल्ड टाउन, अनन्तपुर।	—वही—

[सं. 76/ आ. प्र.-लो. स./98]

आदेश से,
बाबू राम, सचिव

ORDER

New Delhi, the 7th April, 2000

O.N. 50.—Whereas, the Election Commission is satisfied that the contesting candidates specified in column (3) of the Table below of the General Election to the House of the People, 1998 from the Constituency specified in column (2) against his/her name has failed to lodge an account of his/her election expenses as shown in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder.

And whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice and the Election Commission is satisfied that he/she has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or the Legislative Assembly or Legislative Council of States for a period of 3 years from the date of this order.

TABLE

Sl. No. & Name of the No. Parliamentary Constituency	Name of the contesting candidates	Reason for disqualification	
1	2	3	4
1. 21-Chittoor	Shri Manohar, 4-2357, Iruvaram Village & Post, Chittoor Mandal & District,	Failed to lodge the account of election of expenses	
2. 24-Hindupur	Shri B.N. Adinarayana Gupta, 4-16, Gandhi Bazaar, Madakasira.	-do-	
3. -do-	Shri Boya Narasimhulu, Maravapalli (Post), Penukonda,	-do-	
4. do-	Shri S. Raja Sekhar, Ammavaripalli Guttur (Post), Penukonda (M),	-do-	
5. 25-Anantapur	Shri Adil Basha, 28/73, Bora Street, Old Town, Anantapur.	-do-	

[No. 76/AP-HP/98]

By Order,
BABU RAM, Secy.

आदेश

नई दिल्ली, 8 मई, 2000

आ.आ. 51.—निर्वाचन आयोग का समाधान हो गया है कि तमिलनाडु से लोकसभा के साधारण निर्वाचन 99 जो स्तम्भ (2) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथा दर्शित अपने निर्वाचन व्यक्तों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थियों ने सम्पूर्ण सूचना दिये जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या व्यायौचित्य नहीं है,

अतः अब निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (3) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

सारणी

फ.सं.	संसदीय निर्वाचन क्षेत्र की फ.सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहित का कारण
1	2	3	4
1. 8—तिरुपाट्टुर	एम. अमनुल्लाह नल्लावनपल्लयम गांव और पो. तिरुवन्नामलाई तालुक		कोई भी लेखा दाखिल नहीं किया गया

[सं. 76/त. ना.-लोक. सं./99]

आदेश से,
बाबू राम, सचिव

ORDER

New Delhi, the 8th May, 2000

O.N. 51.—Whereas the Election Commission is satisfied that the contesting candidate specified in column (3) of the Table below at the General Election to Lok Sabha, 1999 from Tamil Nadu held from the constituency specified in column (2) against his name has failed to lodge an account of his election expenses as mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice to him and the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the person specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No. & Name of Parliamentary No.	Name & Address of the Contesting Candidate	Reason for disqualification
1. 8-Tirupattur	M. Amanullah, Nallavanpallyam Village & Post Tiruvannamalai Taluk	Accounts not lodged at all.

[No. 76/TN-HP/99]

By Order,
BABU RAM, Secy.

आदेश

नई दिल्ली, 8 मई, 2000

आ.अ. 52.—यतः निर्वाचन आयोग का समाधान हो गया है कि केरल राज्य में लोक सभा के निर्वाचन के लिये जो नीचे की सारणी के स्तम्भ (2) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (3) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाये गये नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (4) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

ओर यतः उक्त अभ्यर्थियों ने उनमें से प्रत्येक को सम्यक् सूचना दिये जाने पर भी उक्त असफलता के लिये कोई कारण अथवा स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग को यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या त्यायौचित्य नहीं है,

अतः अब निर्वाचन आयोग उक्त अधिनियम की धारा 10—क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को सदसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिये इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये निरर्हित घोषित करता है।

सारणी

क्र.सं. निर्वाचन क्षेत्र की क्र.सं. और नाम

निर्वाचन लड़ने वाले अभ्यर्थी
का नाम और पता

निरहृता का कारण

1. 7—पालघाट

श्री टी.के. राजन,
थालीप्पयम करीमपाड़ा
कायाराडी (पो)
पिन- 678510कोई भी लेखा दाखिल नहीं
किया

1	2	3	4
2.	8—ओद्यापालयम अ.आ.	श्री पी.एम. वेलयुधन पे नाट्टुपाडम साउथ वाल्लाकुलम (पो.) अलुवा-683106	कोई भी लेखा दाखिल नहीं किया।
3.	11—एरनाकुलम	श्री जोस पाडिक्कल पोडिकल 199 कुम्बालांगी, कोचीन-7	—वही—
4.	12—मुवाट्टपूमा	श्री थॉमस जोसफ नडुमुकुन्नेल इंडीयानल पो. रामापुरम	—वही—

[सं. 76/केरल-लो. स./99]
आदेश से,
बाबू राम, सचिव

ORDER

New Delhi, the 8th May, 2000

O.N. 52.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (3) of the Table below at the Election to the Lok Sabha, 1999 from Kerala Parliamentary Constituency held from the constituency specified in column (2) against his name has failed to lodge an account of his election expenses as mentioned in column (4) of the said Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failures even after due notice to each of them and the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the said Act, the Election Commission hereby declares the persons specified in column (3) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No.	No. & Name of Parliamentary Constituency	Name & Address of the Contesting Candidate	Reason for disqualification
1	2	3	4
1.	7-Palghat	Shri T.K. Rajan Thalippadam, Karimpara, Kayaradi (PO) PIN : 678510	Accounts not lodged at all
2.	8-Ottapalam (SC)	Shri P.M. Velayudhan Penattupadam, South Vazhakkulam (PO) Aluva-683106	-do-
3.	11-Ernakulam	Shri Jose Padickkal Padickal, 199, Kumbalanghi Cochin-7.	-do-
4.	12-Muvattupuzha	Shri Thomas Joseph Nedumkunnel Idiyanal P.O. Ramapuram.	-do-

[No. 76/KL-HP/99]
By Order,
BABU RAM, Secy.

आदेश

ताई दिल्ली, 8 मई, 2000

आ. अ. 53.—जबकि, भारत निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथाविनिर्दिष्ट सितम्बर/अक्टूबर, 1999 में हुये जम्मू व कश्मीर राज्य में लोक सभा के साधारण निर्वाचन के लिये जो स्तम्भ (3) में तदनुस्पी विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, के स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाले अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वीन बनाये गये नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथादर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है;

और जबकि, उक्त अभ्यर्थियों ने सम्यक् सूचना दिये जाने पर भी उक्त असफलता के लिये या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिये गये अभ्यावेदनों पर यदि कोई है, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या न्यायोचित्य नहीं है;

अतः, अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधानपरिषद के सदस्य चुने जाने और होने के लिये इस आदेश की तारीख से तीन वर्ष की कालावधि के लिये एतद्वारा निरर्दित घोषित करता है।

सारणी

क्रम सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्रम सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहंता का कारण
1	2	3	4	5
1.	जम्भू कश्मीर राज्य में लोक सभा के लिये साधारण निर्वाचन, 1999	6—जम्मू	श्री देवेन्द्र कुमार, म. नं. एफ-1298, सं. 6, नानक नगर, जम्मू (जम्मू व कश्मीर)	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—वही—	—वही—	श्री विजय कुमार, मकान नं. 312, नई बस्ती, जम्मू (जम्मू व कश्मीर)	—वही—

[सं. 76/जम्मू व कश्मीर—लो. स./99(1)]

आदेश से,

के आर. प्रसाद, सचिव

ORDER

New Delhi, the 8th May, 2000

O.N. 53.—Whereas, the Election Commission of India is satisfied that the contesting candidates specified in column (4) of the Table below at the General Election to the Lok Sabha held in September/October, 1999 in the State of Jammu and Kashmir, as specified in column (2) and held from constituency correspondingly specified in column (3) against their names have failed to lodge any account of their election expenses, as shown in column (5) of the Table, as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representation made by them, if any, is satisfied that they have no good reason or justification for the said failure.

Now, therefore, in pursuance of section 10-A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of three years from the date of this order.

TABLE

Sl. No.	Particulars of election	No. and Name of Constituency	Name and address of contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General Election to the Lok Sabha held in 1999 in the state of Jammu and Kashmir.	6-Jammu	Shri Devinder Kumar, H.No. F-1298, Sector-6, Nanak Nagar, Jammu (Jammu & Kashmir)	Failure to lodge any accounts of election expenses
2.	-do-	-do-	Shri Vijay Kumar, H.No. 312, Nai Basti, Jammu (Satwari), (Jammu & Kashmir)	-do-

[No. 76/J&K-HP/99(1)]

By Order,

K.R. PRASAD, Secy.

गई दिल्ली, 23 फरवरी, 2000

आ.अ. 54.—लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एतद्वारा 33-औरंगाबाद संसदीय निर्वाचन-क्षेत्र से लोक सभा के लिए श्री रामकृष्ण सुपुत्र जगन्नाथ पाटिल के निर्वाचन को चुनौती देने वाली श्री अम्बादास सुपुत्र एकताथराव दान्वे द्वारा दाखिल की गई 1998 की निर्वाचन अर्जी संख्या 7 में मुम्बई स्थित उच्च न्यायलय, औरंगाबाद खण्डपीठ के तारीख 12 अक्टूबर, 1999 के निर्णय को प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाषा में छपा है।)

[सं. 82/महा-लो.स./7/98) औरंगाबाद]
आदेश से,

सी. आर. ब्रह्मम्, सचिव

New Delhi, the 23rd February, 2000

O.N. 54.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated 12th October, 1999 of the High Court of Judicature at Mumbai, Aurangabad Bench in Election Petition No. 7 of 1998 filed by Shri Ambadas S/o Eknathrao Danve challenging the election of Shri Ramkrushna S/o Jagannath Patil to the Lok Sabha from 33-Aurangabad Parliamentary Constituency.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

ELECTION PETITION NO. 7 OF 1998

Ambadas Eknathrao Danve.

Petitioner.

VERSUS

Ramkrushna Jagannath Patil.
Petitioner : Absent.

Respondent.

Shri N. J. Pahune—Patil, Advocate for the respondent.

CORAM : R. G. DESHPANDE, J.

DATED : 12th October, 1999.

PER COURT :

Shri N. J. Pahune—Patil, Learned Counsel for the respondent present. The petitioner is absent. No one is appearing on behalf of the petitioner.

2. By order dated 23rd September, 1999 Shri S. M. Godsay, Advocate representing the petitioner was discharged from the case for the reasons as are made clear in the previous orders. However on 23-9-1999 this Court specifically passed the order directing the office of the High Court to issue notice to the petitioner informing him that the matter would be heard on 11-10-1999 at 2.15 p.m. and the hearing was fixed on Exh. 10 i.e. as regards preliminary objections. By the said notice, it was specifically directed to be informed to the petitioner that if on the fixed dated i.e. 11-10-1999, the petitioner fails to attend the Court and if he fails to make any other alternate arrangement for appearance on his behalf, the Court will pass necessary and appropriate orders as regards disposal of the petition.

3. This matter was listed yesterday i.e. 11-10-1999 before this Court and it was called out twice to find out whether the petitioner was present or not. However, the petitioner was not present. Shri N. J. Pahune Patil for the respondent-sole was present. The matter was, therefore, again adjourned for a day so as to find out if the petitioner would appear in the Court at least during the working hours of the Court on that day. However, till the end of the Court hours, neither the petitioner appeared before the Court nor anyone did appear on his behalf. The matter was therefore, shunted and is now, fixed today. Even today also neither the petitioner nor any one is present on his behalf. Shri J. Pahune Patil, as observed above, is present for the respondent.

4. The present petition relates to the Lok Sabha election held on 28-2-1998 pertaining to Lok Sabha Constituency No. 33, Aurangabad Parliamentary Constituency in Marathwada region of State of Maharashtra.

5. Along with very many challenges, the point of corrupt practices is also involved in the present petition.

6. The petition is specifically listed today for hearing on Exh. 10 as regards preliminary issues. Since the matter is

fixed for hearing on preliminary issues on Exh. 10 and since no one is appearing on behalf of the petitioner, this Court has no other alternative than to dismiss the petition in default i.e. for want of prosecution, in accordance with provisions of Order 9 Rule 8 of the Civil Procedure Code.

7. It is made clear that initially Shri S. M. Godsay, Adv. did appear in the matter on behalf of the petitioner. However, in view of his application and the notice he had given to his client he was allowed to withdraw his power.

8. In pursuance of the order dated 23rd September, 1999 a notice was issued to the petitioner by the Registry of this Court on 1-10-1999 which reached to the District Court on 4-10-1999 and in pursuance of the same, necessary notice was served on the petitioner on 7-10-1999. The Bailiff Report in support of the proper service is on the record which clearly shows the service of the notice on the petitioner, whereby he was informed about the date i.e. 11-10-1999. The notice is also served in the presence of one witness i.e. Shri Devidas Danve whose signature is also seen on the office copy of the notice in proof of service. The Bailiff Report is also clean in every respect and this Court has no hesitation in holding that the notice was properly served on the petitioner. In view of this petition stands dismissed for want of prosecution.

9. Since the petition is being dismissed for want of prosecution, it would be necessary to make necessary orders as regards the amount which is deposited by the petitioner in this Court. It is hereby directed that the amount of Rs. 2000 which is deposited by the petitioner in this Court, shall be paid to the counsel for the respondent. After deducting necessary expenses that would be required by the office for publication of the notice in the Government Gazette.

10. The Registry of the High Court of Bombay, Bench at Aurangabad, shall take steps immediately in accordance with the provisions of Section 103 of the Representation of the People Act, 1951.

Dated : 12th October, 1999.

Sd/-
for Dy. Regr.
[No. 82/MT-HP/7/98(Aurangabad)]
By Order,
C. R. BRAHMAM, Secy.

नई दिल्ली, 23 फरवरी, 2000

आ.आ. 55—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा 33-औरंगाबाद संसदीय निर्वाचन क्षेत्र से लोकसभा के लिए श्री प्रदीप शिवनारायण जयसवाल के निर्वाचित को चुनौती देने वाली श्री मारेश्वर द्वारा दाखिल की गई मुम्बद्दल स्थित उच्च न्यायालय, औरंगाबाद खण्डपीठ के 1996 की निर्वाचन अर्जी सं 6 में 25 जून, 1999 के निर्णय को प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/महा-लो. स./6/96(औरंगाबाद)]

ग्रादेश से,
सी. आर. वग्यानी, सचिव

New Delhi, the 23rd February, 2000

O.N. 55.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated 25th June, 1999 of the High Court of judicature at Mumbai, Aurangabad Bench in Election Petition No. 6 of 1996 filed by Shri

1309 GI/2000=2

Moreshwar challenging the election of Shri Pradeep Shivnarayan Jaiswal to the Lok Sabha from 33-Aurangabad Parliamentary Constituency.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

Election Petition No. 6 of 1996

Moreshwar,
S/o Dinanath Save,
Age 66 years,
Occ. Business and Social Work,
R/o Anjali Complex No. 1,
Khadkeshwar,
Aurangabad.
... Petitioners

Versus

1. Pradeep Shivnarayan Jaiswal.

Age major.

Occ. Business.
R/o Rangar Galli,
Aurangabad.

2. Gopal Tukaram Deo,

(Election Agent of Pradeep S. Jaiswal),

Age major,
Occupation business,
R/o Sunari Hanuman Road,
Aurangabad.
... Respondents

Shri V. D. Hon. learned Advocate for petitioner.

Shri R. D. Mane, learned Advocate for respondent Nos. 1 and 2.

Coram : B. R. Vagyan J.

Dated : 25th June, 1999

JUDGMENT :

The petitioner, respondent No. 1 and 20 others were the candidates who had contested the election for the Lok Sabha from 33-Aurangabad Parliamentary Constituency. The election process had commenced with the notification issued on 19th of March 1996. The last date for filing nomination was 3rd of April 1996. The election programme for 33-Aurangabad Parliamentary Constituency was as under under :

(1) Issuance of Nomination papers	:	27-3-1996
(2) Last date for acceptance of nomination papers.	:	3-4-1996
(3) Scrutiny and publication of the list of candidates.	:	4-4-1996
(4) Withdrawal and publication of final list of candidates.	:	6-4-1996
(5) Allotment of symbols.	:	6-4-1996 4 p.m.
(6) Duration of propaganda.	:	5-5-1996 upto 5 p.m.
(7) Date of polling	:	7-5-1996
(8) Date of counting	:	9-5-1996 from 8 a.m. onwards.
(9) Result declared on	:	10-5-1996

2. The petitioner contested the election as an independent candidate with the election symbol "Plough". Respondent No. 1 was a candidate sponsored by the alliance of Shiv Sena Party and Bharatiya Janata Party (SS-BJP). The symbol of respondent No. 1 was "Bow and Arrow". Respondent No. 1 secured highest number of votes and, therefore, he was declared elected. 6,97,495 voters exercised their right of franchises. 19,861 votes were declared invalid. The respondent No. 1 secured in all 3,01,163 votes and was declared elected by a margin of 1,14,579 votes.

3. The respondents have raised a preliminary objection about maintainability of the Election Petition on the ground that it is not in conformity with the Conduct of Election Rules 1961. However, the respondents did not press the preliminary objection.

4. The present petition is being filed challenging the election of respondent No. 1 to be void on the ground of corrupt practices indulged into by respondent No. 1, respondent No. 2, who is his election agent, and supporters with consent of respondent No. 1 and his election agent, respondent No. 2. The petitioner has challenged the election of the respondent No. 1 on following grounds:

- (I) The respondent No. 1, his agent or any other person, with their consent, directly and indirectly interfered or attempted to interfere the free exercise of electoral right of voters and thereby committed corrupt practice of undue influence.
- (II) The respondent No. 1, his agent or any other person, with their consent, promoted feelings of enmity or hatred between different classes of citizens of India on the ground of caste and community for the furtherance of the prospects of election of respondent No. 1 or for prejudicially affecting the election prospects of petitioner and thereby committed corrupt practice.
- (III) The respondent No. 1 or his agent or any other person, with their consent, published statement of fact which was false in relation to petitioner's personal character or conduct or in relation to his candidature or withdrawal with intention to mar his election prospects and thereby committed corrupt practice.
- (IV) The respondent No. 1, his agent and any other person with their consent, hired and procured, on payment or otherwise, large number of vehicles for free conveyance of voters to and from any polling stations provided within constituency and thereby committed corrupt practice.
- (V) The respondent No. 1 and his agent incurred election expenditure in contravention of Section 77(1) and (3) and thereby committed corrupt practice.
- (VI) Respondent No. 1, his agent or any other person with their consent, obtained assistance from Gazetted Officers for the furtherance of the prospects of election of respondent No. 1 and thereby committed corrupt practice.
- (VII) The respondent No. 1 has failed to comply with the provisions of the Constitution and Representation of People Act, 1951, rules and orders made thereunder.

5. Respondent nos. 1 and 2 have filed common written statement at Exh. 9. It is contended by them that the allegations made in the election petition with regard to corrupt practices are vague. They have further denied that they have committed any corrupt practices within the meaning of Section 123 of the Representation of People Act, 1951. It is specifically contended that the respondent nos. 1 and 2 have not indulged in any corrupt practice of undue influence. They have denied that they have committed corrupt practice by promoting or attempting to promote feelings of enmity and hatred between different classes of the citizens of India for the purpose of election. They have further denied that they have indulged in any corrupt practice by publication of statement of fact which was false in relation to the personal character and conduct of petitioner. They have denied that they hired or procured vehicles for free conveyance of voters within the constituency, to and from any polling stations, provided within the constituency. They have denied that they have incurred election expenditure in contravention of Section 77(1) and (3) of the Representation of People Act, 1951. They have asserted that separate and correct account of expenditure made at the time of election has been submitted to the Returning Officer and the Collector, Aurangabad. They have also denied that the result of the election has been materially affected on account of non-compliance of the provisions of the Constitution or the provisions of the Representation of People Act, 1951, or rules or orders made thereunder. They have made grievance that the allegations made by petitioner in this behalf are vague and necessary particulars are not at all given. It is denied that with their consent, by taking undue advantage, by direct or indirect interference an attempt to interfere with the free exercise of electoral right of voters was made. Grievance is also made that the three corporators

and one Shri Jaya Gudge have not been joined as parties to the Election Petition. It is denied that Guardian Minister Shri Chandrakant Khaire pressurized the voters to vote in favour of respondent no. 1. Respondent nos. 1 and 2 have further denied that they have any concern whatsoever with the publication of Deogiri Tarun Bharat, a Marathi daily published from Aurangabad. They have specifically denied that they have any concern in respect of news item published in the issue of Deogiri Tarun Bharat dated 25-4-1996. It is contended that the Guardian Minister Shri Chandrakant Khaire did not use defamatory words in respect of petitioner in the interview. According to them, if there is any exaggeration of news by the newspapers, the respondents 1 and 2 cannot be held liable. It is denied by the respondents that they have incurred expenses to the tune of Rs. 6,67,000 on account of plane charges, for to and fro travel of Shri Bal Thakare. According to them, the expenses required for the meeting of Shri Bal Thakare have been incurred by the Central Election Office of Shiv Sena which is situated at Mumbai. It is specifically stated that the expenses required for printing of handbills, banners, posters and preparation of audio and video cassettes have been incurred by the Central Election Office of Shiv Sena situated at Mumbai.

6. In view of the above pleadings of the parties, following issues are framed at Exh. 21 and I have recorded my findings against each of the issues.

ISSUES::

1. Does petitioner prove that the respondent no. 1, his agent or any other person, with their consent, directly/indirectly interfered or attempted to interfere the free exercise of electoral right of voters and thereby committed corrupt practice of undue influence as contemplated under Section 123(2) of Representation of People Act, 1951?

NO.

2. Does petitioner prove that the respondent no. 1, his agent or any other person, with their consent, promoted feelings of enmity or hatred between different classes of citizens of India on ground of caste and community for the furtherance of the prospects of the election of respondent no. 1 or for prejudicially affecting the election prospects of the petitioner and thereby committed corrupt practice u/s. 123 (3A) of Representation of People Act, 1951?

NO.

3. Does petitioner prove that the respondent no. 1, his agent or any other person, with their consent, published statement of fact which was false in relation to his personal character or conduct or in relation to his candidature or withdrawal with intention to mar his election prospects and thereby committed corrupt practice under Section 123 (4) of Representation of People Act, 1951?

NO

4. Does petitioner prove that the respondent no. 1, his agent or any other person with their consent hired and procured on payment or otherwise large number of vehicles for free conveyance of electors/voters to and from any Polling stations provided within constituency and thereby committed corrupt practice under section 123(5) of Representation of People Act, 1951?

NO.

5. Does petitioner prove that the respondent no. 1 and his agent incurred election expenditure in contravention of Section 77(1) and (3) and thereby committed corrupt practice under Section 123(6) of Representation of the People Act, 1951?

NO.

6. Does petitioner prove that the respondent no. 1, his agent or any other person with their consent obtained assistance from gazetted officers for the furtherance of the prospects of respondent no. 1, selection and thereby committed corrupt practice under section 123(7) of Representation of People Act, 1951?

NO

7. Is petitioner entitled to get declaration that the election of respondent no. 1 is void under Section 100 (1) (b), 100 (1) (d) (ii) and 100 (1) (d) (iv) of Representation of the People Act, 1951?

NO.

8. What relief and order?

The petitioner is not entitled to any relief. The Election Petition is liable to be dismissed.

REASONS :

9. In this Election Petition the petitioner has levelled serious charges of corrupt practices against the respondent no. 1 and 2. The burden of proving the commission of corrupt practice pleaded in the Election Petition is obviously on the petitioner and the petitioner has to discharge this burden satisfactorily. In discharging the burden of proof, the petitioner cannot depend on preponderance of probabilities. The corrupt practice must be established beyond reasonable doubt by cogent and satisfactory evidence which is clear and unambiguous.

10. The petitioner has filed purshis at Exh. 22 and thereby informed that he does not want to produce documentary evidence and to lead oral evidence in support of the allegations of corrupt practices made in the election petition. Similarly, the respondent nos. 1 and 2 have also filed their common Purshis at Exh. 23 and hereby informed that they do not want to lead any oral evidence.

11. The petitioner has made serious allegations against the respondents no. 1 and 2 and challenged the election of the respondent no. 1, however, the petitioner has not adduced any oral evidence in order to prove correctness of the allegations of corrupt practice made against respondent nos. 1 and 2. There is absolutely no evidence on record to show that the respondents no. 1 and 2 have indulged in corrupt practices as alleged by the petitioner in the election petition. For want of evidence, I record negative finding on issue nos. 1 to 8. The petitioner has failed to prove any of the allegations of corrupt practices made against respondent nos. 1 and 2. Under the circumstance, the petitioner is not entitled to get any relief.

The Election Petition is liable to be dismissed. In the result, I pass following order.

ORDER

The Election Petition is dismissed.

The parties shall bear their own costs.

The amount of security deposit of Rs 2,000 be refunded to the petitioner or his Advocate.

The office is directed to intimate the substance of the decision to the Election Commission and the speaker of the House of Parliament.

The Office is further directed to send to the Election Commission and authenticated copy of the decision of the Election Petition.

B B. VAGYANI, Judge

Date 25-6-99.

[No. 82/MT-HP/6/96(Aurangabad)]

By Order,

C. R. BRAHMAM, Secy.

नई दिल्ली, 23 फरवरी, 2000

प्रा. अ. 55.—नोक प्रतिनिधित्व व्यविधियम्, 1951 (1951 की 43) को धारा 106 के अनुपराण में निर्वाचन आयोग एवं द्वारा 24-भण्डारा संसदीय निर्वाचन-क्षेत्र से लोक सभा के लिए श्री प्रफुल्ल पटेल के निर्वाचन को चुनौती देने वाली, श्री मच्चिदानन्द द्वारा दाखिल की गई 1998 की निर्वाचन जी संघा 2 में मस्क्र स्थित उच्च न्यायालय

नागपुर खण्डपीठ के 6 अक्टूबर, 1998 के निर्णय को प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/महा-लो. स/2/98(नागपुर)]

आदेश से,

सी. आर. ब्रह्मम्, सचिव

New Delhi, the 23rd February, 2000

O.N. 56.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated 6th October, 1998 of the High Court of judicature at Mumbai, Nagpur Bench in Election Petition No. 2 of 1998 filed by Shri Sachchidanand challenging the election of Shri Prafulla Patel to the Lok Sabha from 24-Bhandara Parliamentary Constituency.

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY : NAGPUR BENCH, NAGPUR

D. D. No. 5592/99

Dated the 20th July, 1999

Election Petn. No. 2/98

PETITIONER :

Sachchidanand s/o Hiraman Fulekar,
age 38 years, Agriculturist. R/o,
Kumbhare Nagar, Tumsar, Tehsil Tumsar,
District Tumsar.

Versus

RESPONDENTS :

Prafulla son of Manoharbhai Patel,
Major, r/o Ramnagar, Gondia, Tehsil
Gondia, District Bhandara & others.

Copy forwarded with compliments :--

- (1) The Chief Election Commissioner,
office of the Election Commission,
Nirwachan Bhawan, New Delhi-110001.
- (2) The Hon'ble Speaker, of Lok Sabha,
Parliament House, New Delhi-110001.

Election Petition U/section 80 of Representation of the People Act, 1951 filed by Shri A. B. Choudhary, Advocate for Petitioner praying that this Hon'ble Court may kindly be declare the Election of Respondent No. 1 to the 12th Lok Sabha from 24-Bhandara Parliamentary Constituency as void and declare the petitioner as duly elected to the 12th Lok Sabha from 24-Bhandara Parliamentary Constituency as valid.

With an intimation that upon hearing

S/Shri A. B. Choudhary, J. S. Mokadam, Adv. for Petitioner.

Shri S. V. Manohar, Advocate for R. No. 1.

Shri P. T. Trivedi, Advocate for R. No. 2.

Shri Anand Parchure, Advocate for R. No. 12.

The Court passes following order :—is enclosed here-with

CORAM :—KULKARNI, J. (Copy of order is enclosed)
Dated :—6th October, 1998.

It is hereby accordingly ordered that the Court's order shall be carried out and complied.

Witness Shri Y. K. Sabharwal, Chief Justice at Bombay, aforesaid, this 6th day of October one thousand nine hundred and ninety eight.

Yours faithfully,
Sd/-

ASSISTANT REGISTRAR

Copy to :—

(1) Sachichidanand s/o Hiraman Fulekar,
Agriculturist, r/o Kumbhare Nagar,
Tumsar, Tahsil Tumsar, District,
BHANDRA.

Sd/-

ASSISTANT REGISTRAR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

ELECTION PETITION NO. 2 OF 1998

PETITIONER :

Sachichidanand son of Hiraman Fulekar,
aged 38 years, Agriculturist, Resident
of Kumbhare Nagar Tumsar, Tahsil,
Tumsar, District Bhandara.

Versus

RESPONDENTS :

1. Prafulla son of Manoharbhai Patel, Major, resident of Rannagar, Gondia, Tahsil Gondia, District Bhandara.
2. Narayandas son of Durgaprasadji Saraf, Major, Shriram Bhawan, Tumsar, Tahsil Tumsar, District Bhandara.
3. Madhavrao son of Tulsiram Bante, Major, resident of Kanhalgaon, Tahsil Mohadi, District Bhandara.
4. Shri Bhagrata son of Mahadeo Wasnik, Major, resident of Garra (Bacheda), Tahsil Tumsar, District Bhandara.
5. Radheshyam Agrawal, Major, resident of Sohanlal Mishra Ward, Gondia, Tahsil Gondia, District Bhandara.
6. Abdul Mujib Khan Abdul Hamid Khan, Major, resident of Dr. Pal Chowk, Raitoli, Gondia, Tahsil Gondia, District Bhandara.
7. Maniram Bajirao Chachane, Major, resident of Dandegaon, Tahsil Gondia, District Bhandara.
8. Hemrai Chindhuji Chachane, Major at Ghategaon, Post Khodshivni, Tahsil Sadak Arjuni, District Bhandara.
9. Jeevanlal Maroti Dongre, Major resident of Umri, Post Dagaon, Tahsil Gondia, District Bhandara.
10. Gulab son of Tarachand Dhurve, Major, resident of Teegaon, Tahsil, Amgaon, District Bhandara.
11. Vijay Shamrao Bahekar, Major, at Risama, Tahsil Amgaon, District Bhandara.
12. Maheshbhai Babulalbhai Madhwani, Major, resident of Revenue Colony, Ganesh Nagar, Gondia, District Bhandara.
13. Budhram Atmaram Meshram, Major, at Bangaon, Post Amgaon, Tahsil Amgaon, District Bhandara.
14. Deleted as per Court's order dated 3-8-98 and 10-8-98.
15. Deleted as per Court's order dated 3-8-98 and 10-8-98.

S/ Shri A. B. Chaudhari & T. K. Mokadam, Advocates
for the petitioner.

Shri S. V. Manohar, Advocate for Respondent No. 1.

Shri P. T. Trivedi, Advocate for Respondent No. 2.

Shri Anand Parchure, Advocate for Respondent No. 12.

CORAM : S. P. KULKARNI, J.

DATED : 6th October, 1998

ORAL ORDER BELOW EXH. 53 & 54 :—

By this petition, the petitioner challenges the election result in respect of 24th Bhandara Parliamentary Constituency on the ground that the respondent no. 1 indulged into certain corrupt practices consisting of publication of news item in making a false propaganda that the petitioner had made a pack with Congress party with reference to the respondent no. 1 in consideration of some money, that he also caused certain news item to be published in daily 'Lokmat' with the specific object of prejudicing the prospects of the petitioner casting some aspersions on his personal character and conduct, that the respondent no. 1 also indulged in managing publication and distribution of pamphlets to the extent of 1,00,000 in number which were distributed in the constituency in question again casting some aspersions on the personal character of the petitioner, that the respondent no. 1 was said to have thus indulged in the corrupt practices of the above kind. It adversely affected the results of the election with reference to the votes secured by the petitioner as well as the respondent no. 1 who was declared elected.

2. The petitioner personally presented the petition on 16-4-1998 challenging the election results on the said ground and seeking a relief of setting aside the said election. It is not necessary to go into the details as regards the contents of the petition more than what is stated above for the limited purpose for which the present controversy raised as a preliminary objection is required to be decided. The respondent is said to have secured 3,24,292 votes whereas the petitioner secured 10,165 votes.

3. After the presentation of the petition, as usual, the office made the scrutiny and had raised certain objections. One of that objection was that the copies which accompanied the presentation of the petition were not signed as "true copies" and while curing this objection after the expiry of period of limitation, those copies were said to have been signed for the first time as true copies on 18-4-1998. There is no debate before the Court as to the expiry of limitation on and for 17th of April, 1998. After the petition was presented and the respondents were served, the respondent no. 1 the returned candidate and respondent no. 12 preferred to raise preliminary objections to the maintainability of the petition vide Exhs. 53 and 54. According to these respondents, the petition is hit by the provisions of Section 86 of the Representation of People Act, because the manner in which it was presented and its state, as could be seen, is in violation of the provisions of that statute and the Rules. To articulate these objections, it was stated on behalf of both these respondents that firstly, as required by the provisions of Section 81 of the Act, the petition was not accompanied by copies signed by the petitioner for furnishing them eventually to the respondents as the true copies. The second contention that was made as an objection on behalf of these respondents was that since the petition involved allegations referred to the corrupt practices and though it was not debatable that such a petition has to be accompanied by an affidavit which is required to be sworn in by the petitioner as required by Section 83 (1) of the Act, the present petition came to be initiated without there being such affidavit as required by law. It must be stated at this stage that the petition in fact is accompanied by an affidavit but the attack is on the form of affidavit, the contents which were sworn in by the petitioner and the violation that was caused to be made of the provisions of Section 83 of the Act, Rule 94-A of the Rules and Form No. 25 as prescribed by the said Rules. It was contended that in law an affidavit which does not conform to the provisions of the Statute, the Rules and the Form which have a mandatory force so far as compliance was concerned, makes the very presentation of the petition defective and in the eyes of law such affidavit which is defective affidavit should not be recognised as an affidavit as if it has no legal status and it is not an affidavit in the eyes of law and, therefore, in a petition

of this kind where an accompanying affidavit has to be considered as no affidavit at all, there is a violation of the provisions of Section 83 and eventually it is also a violation of the provisions of Section 81 of the Act because a correct presentation of the petition as envisaged by Section 81 has to be made in the light of the provisions relating to what the contents of the petition should be and when they are not there, the non-compliance of the provisions of Section 83 of the Act partake the colour of causing violation to Section 81 of the Act, also it was then pointed out, as the next ground for raising a preliminary objection that the petition so also the annexures which accompany the same, are required to be verified in the same manner in which pleadings in the civil suit are required to be verified. What was contended was that although the verification at the foot of the petition seems to be there, that verification has to be in consonance with Section 139 of the C.P.C., inasmuch as the verification is to be done before the same authorities which are empowered to have an affidavit sworn in before them viz. A Magistrate, First Class; a Notry or an Oaths Commissioner. It was, therefore, pointed out that the annexures do not at all have any verification though required by law but then the petition which at the foot seems to include a verification clause was a verification not before any of those three prescribed authorities as a result of which the petition also further suffers from deficiency in not having verification as required by law.

4. On behalf of the petitioner it must be said to the credit of the learned counsel appearing for the petitioner that in fairness the position of law as obtainable from the provisions of the statute and the Rules as also from the authorities of the Supreme Court and various High Courts which speak on these subjects, he very justifiably preferred not to debate about those aspects and in my view very rightly and fairly. Law with respect to these aspects and such type of deficiencies being viewed by the courts in the particular manner is almost settled by the decisions of the Courts in interpreting the force of the provisions of the Sections 81 read with Section 83 of the Act, Rule 94 of the Rules and the format at Form No. 25.

5. On facts the scrutiny does not invoke any process of judicially deciding any aspects except to describe what the state of the record seems to be. Therefore, what is there on the record is there. What is not there, is not there and then what seems to be there whether it is in conformity with the Rules or not is the only type of scrutiny that is required to be done now.

6. Facts as presented for scrutiny in deciding preliminary objections also do not present any complicated picture.

7. Taking the point with respect to the verification, as I said before, there is whatever no debate that the Statute and the Rules prescribed that a petition containing averments while questioning the election of a returned candidate makes certain averments, those averments are required to be verified in the manner in which the pleadings in the Civil Court are verified and there is also no debate with respect to the fact that Section 139 C.P.C. does come into play and apply in controlling this procedure with respect to verifying the pleadings and that the pleadings on behalf of the petitioner as they stand, the same have not been verified before the prescribed authorities within the meaning of Section 139 C.P.C. and by the provisions of order 6 rule 15 of the C.P.C. Undoubtedly while reading the provisions of Section 81 read with Section 83 of the Representation of People Act, a petition after following the due compliance of those provisions is the petition, which could be stated in law to have been a validly presented petition. On facts, therefore, petition does suffer from this deficiency. Annexures do not have verification of the kind of the pleadings as mentioned above. They are the simple annexures in the form of the xerox copies of certain documents at the foot of which the petitioner has put his signature. It may be said that they are not the original documents nor signed by the petitioner as the true copies of the original documents. They bear a simple signature of the petitioner at the foot. Incidentally it must be mentioned that when the copy of a document is filed along with the petition, it must have the sanctity of either the original documents, or a certified copy, or at its best the certification by the petitioner himself regarding the

degree of its authenticity before those copies either call upon the respondents to answer the petition, or before the Court considers them for any judicial purpose. That does not seem to be the position with respect to the present petition. Petition and its presentation clearly suffers from this deficiency as discussed above.

8. The next aspect was, about the non-compliance of the provisions of Section 81(3) of the Act in not presenting along with the petition, copies which could be said to be the true copies of the petition for supplying them to the respondents. There is no debate as regards the copies not tallying with the original petition. There is also no debate about the aspect of there being any other typographical errors or deficiencies in the copies, but what was pointed out was that the copy which should have been signed by the petitioner as the true copy for the purpose of serving the same on the respondents, that endorsement as regards it being a "True copy" must not have been there in the light of the office objections raised. The office objections which were allowed to be cured and recognition by the Court as regards the office objections having been cured which could be seen from the record, is indicative of the fact that on the day of the presentation of the petition the accompanying copies did not have the certification by the petitioner that they were the true copies of the petition and further this deficiency was shown to have been cured on 18-4-1998 as could be seen from the office endorsement and the Roznama of the present petition and consequently it was at least by one day, beyond the period of limitation, that the copies for the first time satisfied requirement of them being true copies. In other words the copies did not have the status of the true copies any time before 18-4-1998 though thereafter that endorsement seems to have been duly done as observed from the record. The material consisting of the endorsement of the office, the submissions made by the petitioner, the manner in which these office objections came for the consideration before the Court, the directions given by the Court for curing the deficiencies and lastly the end ore and regarding compliance of those objections as recorded by the Court in its Roznama clearly established that, on the day of the presentation of the petition, the copies did not have the certification of them being the true copies and this certification can be clearly inferred to have been done on 18-4-1998 or a day beyond that but at any rate not before the said day. Obviously the requirement regarding the petition which should also be accompanied by the copies meant for the respondents, and not only those copies must be the copies but they are to be so complete in the form as to attract the title of a true copy, is the requirement of Section 81(3) of the Act, which again, without any controversy a mandatory provision of the law. This deficiency, though however technical, appears to be there and, therefore, on facts the Court must conclude that the petition was during the period of limitation not accompanied by copies which were certified by the petitioner to be the true copies of the petition.

9. This takes the Court to decide the deficiency regarding the accompanying 'affidavit' to the petition. As I observed earlier, the petition in the main contains averments as regards the type of corrupt practices mentioned in paras 7 onward of the petition. In the main, it does contain averments about the acts of the respondent No. 1 regarding the various activities which are prejudicial to the interest of the petitioner in succeeding in the election. If there is to be truth in what was alleged, undoubtedly it does amount to a corrupt practice. There is again no debate, so far as the legal position is concerned that such a petition is to be accompanied by an affidavit in particular with respect to the averments regarding the corrupt practices alleged in the petition.

10. Reference to the accompanying affidavit indicates that there is an affidavit which was sworn in before a Notary that it did have the stamp, the endorsement of the Notary and also the seal of the Notary together with the Notary's designation. Reference to Form No. 25 indicates that an affidavit as contemplated by Form No. 25 read with Rule 94-A of the Election Rules has to fulfil certain requirements. To clearly enumerate them, one may observe that the affidavit must contain the name of the petitioner. Secondly it must state the name of the respondent whose election is called in question. Thirdly the affidavit has to mention the names of corrupt practices which are alleged in the petition viz. The broad titles and the categories of the corrupt practices as mentioned in the statute to point out the type of corrupt

practice or practices as have been done by the returned candidate so as to attract the categories of corrupt practices prescribed under the statute. The fourth requirement seems to be that there has to be specific mention to the paragraph numbers of the petition which referred to such kind of corrupt practices. The fifth requirement seems to be that having so mentioned the names of corrupt practices, having so mentioned paragraph numbers in relation to the corrupt practices of which the particulars come to be mentioned in those paragraph numbers, the petitioner has to specifically state which of the contents of his averments in the petition were true to 'his personal knowledge' and which of the paragraph numbers in relation to the corrupt practices or the particulars of the corrupt practices mentioned in the petition were from the information received and believed by him to be true. The sixth requirement seems to be that the averments come to be made not merely based on the personal knowledge but from the information received by the petitioner and believed by him to be true, the petitioner seems to have been required by the Rules and the Form to specify the 'sources' of such information. The 7th requirement seems to be that the affidavit obviously requires the deponent's signature, then a solemn affirmation as regards the very contents of the affidavit itself and such affidavit is required to be sworn in before the Magistrate/Notary/Oaths Commissioner and lastly the official before whom such affidavit comes to be sworn in, must put his designation below his signature. These broadly seemed to be the requirements of the affidavit.

11. Reference to the affidavit which accompanies the petition indicates that firstly the name of the respondent whose election is called in question is not mentioned. Secondly there is no endeavour to name the corrupt practices which are mentioned in the petition and as such naming of those corrupt practices by the recognised titles do not appear to have taken place in swearing that affidavit which is at page No. 14 of the petition. Thirdly there is no reference to the Schedule of Annexures in respect of which any mention is there in the affidavit. The reason for this seems to be as contended by the learned advocate appearing for the respondents No. 1 and 12 that there was a reference to the annexures which are mentioned in the petition. Those annexures were endeavoured to be described by the petitioner in his own hand as against the petition containing the very true copy of the annexures by itself quoted and having so described the annexures, making a comment thereon, criticising the contents of that annexures as regards corrupt practices, those annexures came to be appended to the petition without there being an affidavit in support of those annexures as such. It was pointed out that those annexures, are the one which are mentioned as Annexures C, D, E, F and G in particular. Having regard to the annexures and the averments made in the petition, it is clear that these annexures do not have any identical replica of their contents in the petition. These annexures do seem to refer to the corrupt practices attempted to be mentioned in the petition itself. Reading of the contents of the petition by itself is not sufficient to completely understand the nature of the corrupt practices alleged and therefore, a person reading and examining the grounds and averments of corrupt practices has to go beyond the limits of the petition and search through the annexures to understand the nature of corrupt practices alleged which a respondent is to meet out. When this was so, it was justifiably sought to be contended that the annexures so mentioned, the pleadings so relied upon those annexures and when the petition does not contain the very copy of those annexures as the part of the petition properly so called, these annexures do form an integral part of the petition itself and so far as this integral part of the petition was concerned, there is no affidavit in support of the same. Indeed factually or legally no controversy was rightly raised because the state of petition does indicate that for its full communication it intends to have a reliance on those annexures for the purpose of explaining the averments of corrupt practices and the annexures having not been either verified or supported by any affidavit, the requirement of Section 81(3) of the Act or there being the mandatory need of corrupt practices averred in an election petition being accompanied by the supporting affidavit seems to have been clearly violated. Thus the affidavit which accompanies the petition lacks to make a mention to the name of the respondent whose election is called in question, that it further lacks to mention the names of corrupt practices averred in the petition being clearly mentioned in the affidavit and then the Schedule or Annexures which formed integral part of the petition so far as the corrupt practices was con-

cerned, do not have the status of an averment which is duly supported by the affidavit. Lastly there is no distinction made in verifying facts as to which of the contents of the petition were from the personal knowledge and which were from the information received by the petitioner. The form that is followed for swearing an affidavit was to the following effect :

".....petitioner herein do hereby take oath and state on solemn affirmation that the contents in paras.....of the above petition are true to my personal knowledge and believe." by me to be true and correct.

I further state that the contents in paras..... are true to the information received by me from newspaper reports as stated in these paras so also are true to my personal knowledge."

Undoubtedly there can be a composite verification of the facts contained in the petition. It cannot be ruled out that a fact may be within the personal knowledge of a petitioner, and for the procedural aspects of proof, it may also furnish some clue in some other supporting material to establish the same from a fact which is also within the knowledge of a petitioner. But here the composite form in which the averments were sought to be verified in the affidavit and further sworn in, do not appear to clearly state as to which of them are from personal knowledge and which of them are from information received by him or whether those paragraph numbers qualify both the qualities of them being within the personal knowledge as well as even from the information received and believed to be true by him. There also does not seem to be a separate reference to the sources of information from which the information received by the petitioner was described and since the sources are also not described. All these seemed to be the deficiencies contained in the affidavit which deprive that document from holding the character of an affidavit in true legal tense.

12. On facts, from the contentions advanced on behalf of the respondents, it was pointed out that paragraph No. 7 of the petition did refer to an averment indicating indulgence of the respondent No. 1 in the type of corrupt practices mentioned therein. Para 7 totally escapes the procedural compliance of either verification or it having a place in an accompanying affidavit. Neither para 7 seems to have been verified while actually verifying the pleadings nor it seems to have any consideration or place in the accompanying affidavit and therefore, just as the accompanying annexures forming integral part of the petition escaped the procedural requirement of an accompanying affidavit entire para 7 of the petition totally does not have that procedure followed in connection with the averments made therein. It seems unfortunate that in enumerating paragraph numbers, it might not have attracted the attention of the petitioner in reminding him about the need for the inclusion of para 7, though the test of judging this deficiency on the test of causing any prejudice etc. would not be applicable and the technicality of para 7 having not been verified or there being no accompanying affidavit in relation to the averments in para 7 will have to be considered as a deficiency fatal to the form and the contents of the affidavit and, therefore, eventually it having an effect in drawing an inference that so far as the provisions of Section 81 of the Act are concerned. Petition in this case must be held to have not been correctly and properly presented along with the accompanying affidavit. How so ever this aspect may be technical, as it is required to be decided on the strength of the relevant provisions of the law and the Rules which have been declared to be mandatory, equitable considerations or the principal of what prejudice could be shown to have been caused to the respondents, are not the factors which can be taken into consideration in deciding this aspect. They are inapplicable in examining these deficiencies.

13. Thus on facts the Court will have to conclude that the petition suffers from the defects of affidavit, verification of pleadings and there being no verification of annexures and no affidavit in respect of the integral parts of the petition as well as the entire averments in para 7 of the petition having not been duly verified or sworn in.

14. The learned advocates appearing on behalf of the respondents 1 and 12 wanted to rely upon the provisions of Sections 81, 83 and Section 86 of the Act along with the

provisions of Rule 94-A and the form of the affidavit prescribed by the Election Rules. They also wanted to rely upon the cases of Dr. Shipra Vs. Shantilal Khoiwal reported in A.I.R. 1996 S.C. 1691. Vinod Ramchandra Ghosalkar Vs. Sunit Dattatray Tatkare reported in 1997 (2) All M.R. 197, Kokate Baburao Narsingrao Vs. Munde Gopinathrao Pandurang reported in 1997 (3) All M.R. 184, Sahebrao K. Patil Dongaonkar Vs. Ashok R. Patil Dongaonkar reported in 1997 (3) All M.R. 665, Balwant H. Uadhav Vs. Narendra B. Borseonkar reported in 1997 (4) All M.R. 199. Anant Waman Tare Vs. Abdul Rehman Abdul Guffur Antulay reported in 1997 (1) All M.R. 116, and Jagannath S. Rahane Vs. Manisha M. Nimkar reported in 1996 (3) All M.R. 475. Since the mandatory nature of these provisions of law and the announcements of the Supreme Court and the High Courts on the point having not been debated, because of their applicability dependent on facts found in the petition, the net result to which this Court must reach is that the defects which were pointed out on the facts found in this order are of the character which under the provisions of Section 86 of the Act will have to be considered as fatal defects. The authorities thus endeavoured to be relied upon do seem applicable and govern the present controversy. The petition, therefore, cannot be said to be maintainable because of the non-compliance of the provisions of Section 81 read with Section 83 of the Act, Rules 92-A of the Rules and form No. 25 cumulatively. Indeed because of the affidavit which contains deficiencies of considerable character, the affidavit could be said to be almost no affidavit in the eye of law as expected by the provisions of Section 83 read with Rules and the Form, which assumes character of mandatory provisions in order to qualify the valid presentation of petition under the provisions of Section 81 of the Act.

15. Since no controversy on facts and law has been raised requiring recording of any judicial findings concerning such controversy, the facts obtainable from the record and as they stand and are seen the uncontroversial position of law explaining not only the statutory provisions and the Rules, but by the decisions which were sought to be relied upon on behalf of the respondents, the preliminary objections raised vide Exhs. 53 and 54 on behalf of the respondents No. 1 and 12 will have to be upheld and the petition will have to be held as not maintainable within the meaning of the provision of Section 86 of the Act. The petition will have to be therefore, dismissed on this technical ground. Main election petition is hereby dismissed.

16. In the result, therefore, the present petition stands dismissed in upholding preliminary objections vide Exhs. 53 and 54 raised to the maintainability of the petition and this order of dismissal comes to be passed under Section 86 of the Representation of People Act. Copy of this order be sent as required by Section 103 of the Representation of people Act. Only two respondents contested this matter. Rest of the respondents who have filed the written statement, in particular respondent No. 2, had no such objection to raise. Looking to the nature of the controversy, the question posed for any judicial consideration and the technicality involved in the petition not ending in deciding the merits of the same, there shall be no order as to costs in this petition. The Security deposit made on behalf of the petitioner be refunded to the petitioner after the expiry of appeal period.

17. Exhs. 53 and 54 thus stand disposed of accordingly.

TRUE COPY
Sd/-

Assistant Registrar

[No. 82/MT-HP/2/98(Nagpur)]

By order,
C. R. BRAHMAM, Secy.

नई दिल्ली, 23 फरवरी, 2000

आ.प्र. 57—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की शारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा 33-आरंगांबाद संसदीय निर्वाचन-क्षेत्र से श्री रामकृष्ण सुभुद्रा जगलालय पाटिल के निर्वाचन को चुनौती

देने वाली श्री अनन्त राव देशराठे और अन्य द्वारा दाखिल की गई 1998 की निर्वाचन अर्जी संख्या 5 में मुम्बई स्थित उच्च न्यायालय, औरंगांबाद खण्डपीठ के तारीख 21 सितम्बर, 1999 के निर्णय को प्रकाशित करता है।

(निर्णय अधिसूचना के अंतर्गत भाग में छपा है।)

[सं. 82/महा-लो० स० /5/98 (आरंगांबाद)]

आदेश से,

सी. आर. ब्रह्मम्, सचिव

New Delhi, the 23rd February, 2000

O.N. 57.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 21st September, 1999 of the High Court of judicature at Mumbai, Aurangabad Bench in Election Petition No. 5 of 1998 filed by Shri Anantrao Deshrathe and another challenging the election of Shri Ramkrushna S/o Jagannath Patil to the Lok Sabha from 33-Aurangabad Parliamentary Constituency.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

ELECTION PETITION NO : 5 OF 1998

(1) Suhas Anantrao Deshrathe .. Petitioners and another

VERSUS

The District Election Officer .. Respondents for District Aurangabad and others

Shri P. M. Baxi and D. P. Baxi learned counsel for petitioners; absent.

Shri R. G. Deo, Adv. for respondent nos. 1 to 3.

Shri N. J. Pahune Patil, Adv. for respondent no. 4.

Shri R. D. Mane Adv. respondent no. 5.

Shri P. G. Godhamgaonkar, Adv. for respondent no. 12.

Shri N. S. Choudhary, learned APP for respondent no. 13.

The respondents 6, 8, 9, 10, 11 absent though served.

The respondent no. 7 party-in-person absent.

CORAM : R. G. DESHPANDE, J.

Dated : 21st September, 1999.

PER COURT :

This matter is called out twice during the course of the day. On the first occasion Shri P. M. Baxi and Shri D. P. Baxi, both the learned counsel appearing on behalf of the petitioners were absent. The matter was therefore shunted till 4.00 p.m. now, at the end of the day at 4.15 p.m. the matter is again called out; however neither the petitioners nor their Counsel are present.

2. Shri R. G. Deo, the learned counsel for the respondents 1 to 3; Shri N. J. Pahune Patil for respondent no. 4; Shri R. D. Mane for respondent no. 5. Shri P. G. Godhamgaonkar, for respondent no. 12 and Shri N. S. Choudhary, learned APP for respondent no. 13 are present. Respondents 6, 8, 9, 10 and 11 are absent though served. The respondent no. 7 party-in-person is absent. His name is called out thrice in the corridors. However neither he nor any one on his behalf is present.

3. On 28th July, 1999 Shri D. P. Baxi, Adv. made a statement before this Court that his clients wanted to withdraw the Election Petition, in view of the dissolution of the Parliament. However, Mr. Baxi had sought time to file necessary application in the matter to that effect. Taking into consideration the request, the matter was adjourned to 5-8-1999 to enable Shri Baxi to file the necessary application. On 5-8-1999, the matter was called out however, Shri Baxi that

time also again sought time to file an application for withdrawal of the Election Petition as according to him he could not contact his clients. Since none of the parties objected, the case was adjourned to 26-8-1999. On 26-8-1999 the matter was again called out on that day. Shri Baxi filed an application seeking extension of time for filing application for withdrawal of the present Election Petition. That application is at Exh. 27 on the record. For the reasons stated in that application the Election Petition was again, adjourned; however by way of last chance and the matter was directed to be placed on 8th September, 1999. On 8th September, 1999 when the matter was again called out on that day however neither the petitioners nor their Counsel were present. Taking into consideration the various chances granted this Court as a last chance that too purely in the interest of justice adjourned the matter to 9-9-1999 and that too without there being any application from the petitioners or their Counsel. This time also none of the Advocates appearing on behalf of the respondent did object for the adjournment. On 9-9-1999 when the matter was called. Adv. Shri Baxi, for the petitioners appeared and he stated that on the previous day i.e. on 8-9-1999 since he was indisposed and all of a sudden he was required to go home even without informing the Court and therefore, he could be remain present on 8-9-1999. However on 9-9-1999 Shri Baxi filed an application Exh. 28 and the matter was again adjourned. This is how the case has come up today i.e. on 21st September 1999. Today when the matter is called out twice on both the occasions neither the petitioners nor their Counsel are present.

3. In fact, the matter was to be heard on Exhs. 14 and 5 which are the applications filed by the respective respondents for deleting their names from the array of respondents.

4. However since the petitioners and their respective Counsel are absent today. This Court has no other alternative now than to dismiss the Election Petition for want of prosecution on the part of the petitioners.

5. There is no question of any corrupt practice alleged in the present petition. The matter is absence of an application for withdrawal of the petition is supposed to be heard on Exhs. 5 and 14. However neither the petitioners nor their Counsel are present today and hence the Election shall be paid to the Counsel for the respondent, after deducting necessary expenses that would be required by the office for publication of the notice in the Government Gazette.

10. The Registry of the High Court of Bombay, Bench at Aurangabad, shall take steps immediately accordance with the provisions of Section 103 of the Representation of the People Act, 1951.

Dated : 12th October, 1999.

Sd/-

for Dy. Regr.
[No. 82/MT-HP/5/98(Aurangabad)]
By Order,
C. R. BRAHMAM, Secy.

नई दिल्ली, 23 फरवरी, 2000

आ.ग्र. 58.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा 34-बीड संसदीय निर्वाचन क्षेत्र से श्री जयसिंह राव गायकवाड के निर्वाचन को चुनौती देने वाली, श्री अशोक राव द्वारा दाखिल की गई 1998 की निर्वाचन अर्जी संख्या 8 में, मुम्बई स्थित उच्च न्यायालय औरंगाबाद खण्डपीठ के 23 जून, 1999 के मिर्य को प्रकाशित करता है।

(निर्य अधिसूचना के अंग्रेजी भाग में छपा है।)
[सं 82/महा०-लो०सं०/8/98 (औरंगाबाद)]

आदेश से,
श्री० ग्राम. बहूमत, सचिव

New Delhi, the 23rd February, 2000

O.N. 58.—In pursuance of Section 106 of the Representation of the People Act, 1951, (43 of 1951), the Election Commission hereby publishes the judgement dated 23rd June, 1999 of the High Court of judicature at Mumbai, Aurangabad Bench in Election Petition No. 8 of 1998 filed by Shri Ashokrao challenging the election of Shri Jaisingrao Gaikwad to the Lok Sabha from 34-Bed Parliamentary Constituency.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

ELECTION PETITION NO : 8 OF 1998

Shri Ashokrao Shankarrao Patil . . . Petitioner.
VERSUS

Jaisingrao Gaikwad and others . . . Respondents.
Petitioner absent.

Shri A. H. Joshi and Shri Bhushan Kulkarni, counsel for the respondent no. 1;

Mr. T. B. Bhosale, Adv. for respondent no. 2 absent—

Mr. J. R. Patil for respondent no. 4 absent.

Mr. A. M. Kanade, for respondent no. 7.

Reg. Nos. 3, 5 & 6 served—absent.

CORAM : R. C. DESHPANDE, J.
Dated : 23rd June, 1999.

PER COURT :

1. This Election Petition relates to Lok Sabha 34-Bed Parliamentary constituency of Maharashtra held on 22nd February, 1998, the result of which was declared on 3rd March, 1998.

2. The petitioner is absent though he was already served with the notice on 10th May, 1999. Today when the matter is called out, the name of the petitioner was called out specifically three times. However neither the petitioner nor anyone on his behalf is present. Shri A. H. Joshi with Shri Bhushan Kulkarni, counsel for respondent no. 1 present. Shri A. M. Kanade, for respondent no. 7 present. The respondent no. 2 and his counsel, both are absent. Shri J. R. Patil counsel for respondent no. 4 is absent.

3. Today the case is fixed for finalisation of issues and for hearing on Exhs. 23, 29 and also on preliminary issue if so framed.

4. The matter is also fixed for hearing on Exhs. 39 filed by the respondent no. 1.

5. Heard Shri A. H. Joshi, Advocate for respondent no. 1 and Shri A. M. Kanade, for respondent no. 7. The issues are framed vide Exh. 40.

6. Out of the issues framed, issue Nos. (i) and (ii) are framed as preliminary issues on which the matter is to be heard today. Issue No. (iii) is a consequential issue to issue Nos. (i) and (ii). Hence the matter is to be heard today on issue Nos. (i), (ii) and (iii).

7. Shri R. C. Karmarkar and Shri P. R. Katneshwarkar counsel, who appeared for the petitioner initially, were allowed to withdraw the power from the case on 1-4-1999. In view of the withdrawal, the matter was adjourned to 10th June, 1999 and a notice was issued to the petitioner which he received on 10th May, 1999 whereby he was directed to remain present on 10th of June, 1999.

8. On 10th of June, 1999, the matter was called out. However, the petitioner again, remained absent and no one has appeared on his behalf. The case was however, adjourned for finalisation of issues and further hearing on Exhs. 23, 29 and 39 and, accordingly, today the issues are finalised, vide Exh. 40 issue Nos. (i), (ii) and (iii) are framed to be the preliminary issues and as per the earlier order the matter was to be heard on preliminary issues today. However, at the time of hearing, the petitioner remained absent and hence the petition is dismissed in default i.e. for want of prosecution, in accordance with order 9 Rule 8 of the Civil Procedure Code. Exh. 39 is allowed.

9. From the amount of Rs. 2000 (Rupees two thousand) deposited by the petitioner in this Court towards cost shall be paid to the Junior Counsel Shri Bhushan Kulkarni for the

respondent no. 1 after deducting necessary expenses that will be required by the office to do.

10. The Registry of the High Court of Bombay, Bench at Aurangabad, shall take steps immediately in accordance with the provisions of Section 103 of the Representation of the People Act, 1951.

Sd/-
for Dy. Regr.

Dated : 23rd June, 1999.

[No. 82/MT-HP/8/98(Aurangabad)]

By Order,
C. R. BRAHMAM, Secy.

नई दिल्ली, 23 फरवरी, 2000

आ.आ. 59.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एतद्वारा 39-अहमदनगर संसदीय निर्वाचन क्षेत्र से लोक सभा के लिए श्री मारुति देवराम उर्फ दादा पाटिल शेल्के के निर्वाचन को चुनौती देने वाली, श्री सम्भाजी द्वारा दाखिल की गई 1996 की निर्वाचन अर्जी स. 4 में मुम्बई स्थित उच्च न्यायालय, ऑरंगाबाद खण्डपीठ के 22 दिसम्बर, 1999 के निर्णय को प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/महा-लो. स. 4/96(ओरंगाबाद)]

आदेश से,
सी. आर. ब्रह्मम्, सचिव

New Delhi, the 23rd February, 2000

O.N. 59.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 22nd December, 1999 of the High Court of judicature at Mumbai, Aurangabad Bench in Election Petition No. 4 of 1996 filed by Shri Sambhaji challenging the election of Shri Maruti Devram alias Dada Patil Shelke to the Lok Sabha from 39-Ahmednagar Parliamentary Constituency.

IN THE HIGH COURT OF JUDICATURE OF
BOMBAY BENCH AT AURANGABAD
ELECTION PETITION NO. 4 OF 1996
Sambhaji Laxman Dhonde,
age 38 years Occ-agri,
R/o Sade, Tq. Rahuri,
District-Ahmednagar, . . . Petitioner

Versus

1. The Returning Officer,
39, Ahmednagar Parliamentary
Constituency, Collector
Office, Ahmednagar;
2. Election Commission of India,
New Delhi through its Chief
Election Commissioner;
3. Maruti Devram Dada Patil
Shelke, age Major,
R/o Khare, Kharjune, Tq. and
District-Ahmednagar. . . . Respondents
Shri S. S. Nirke, Advocate for the Petitioner.

Shri A. M. Ranade, Govt. Pleader for respondent.
No. 1.

Shri S. B. Deshmukh, Advocate for the respondent No. 3.

CORAM : B. B. VAGYANT, J.

Date : 22-12-1999

JUDGMENT :

1. The petitioner has filed this Election Petition under Sec. 89 of the Representation of People Act, 1951 (hereinafter referred to as the Act of 1951) and thereby challenged the election of 39-Ahmednagar Parliamentary Constituency from which the respondent No. 3 was elected. In brief the facts giving rise to the present election petition are as under :

2. The petitioner is a citizen of India. He is permanent resident of village Sade, Tq. Rahuri, Dist. Ahmednagar. The petitioner claims that he is a social worker and tries to solve the problems of common man. He decided to contest the Parliamentary election as an independent candidate from 39-Ahmednagar constituency in the year 1996. He submitted his nomination on 3-4-1996. After scrutiny, his nomination was accepted by the Returning Officer. A symbol of apple was given to the petitioner. The respondent No. 3 had also contested the Parliamentary election from 39-Ahmednagar Constituency as a candidate of Indian National Congress under the leadership of Shri P. V. Narsimha Rao. The symbol of Palm was given to the respondent No. 3. The election was held on 7-5-1996 and results were declared on 10-5-1996. The respondent No. 3 won the election.

3. It is alleged by the petitioner that there was a dispute between members of Indian National Congress headed by Shri P. V. Narsimha Rao and the member of another group headed by Shri Narayan Datta Tiwari. The party headed by Shri Narayan Datta Tiwari claimed that the said party was the real Congress and symbol of palm should be allotted to that party. Similarly party headed by Shri P. V. Narsimha Rao also claimed that it was the real Congress and claimed the symbol of Palm the said dispute was decided by the Election Commission of India. It was decided that Congress under the leadership of Shri P. V. Narsimha Rao should be known as Indian National Congress and the symbol of palm was allotted to the said party. As against this the party headed by Shri Narayan Datta Tiwari should be known as All India Indira Congress. A symbol of women offering flowers was allotted to the party under the leadership of Shri Narayan Datta Tiwari. It is a specific case made out by the petitioner in the Election Petition that there was direction from the Election Commission of India to the party under the leadership of Shri P. V. Narsimha Rao that his party should not use the word Congress(I).

4. Inspite of a specific direction from the Election Commission of India, the respondent No. 3 printed hand bills and showed in the said hand bills that he was the candidate of Congress (I). The respondent No. 3 distributed those hand bills and thereby made appeal to the voters to elect him. Because of distribution of hand bills, there was confusion amongst the voters. The voters voted in favour of respondent

No. 3 as a candidate of Congress (I). The respondent No. 3 had committed breach of the direction of the Election Commission of India. Therefore, his election is liable to be set aside.

5. The respondent No. 1 has filed written statement at Exh. 4. It is contained that the election petition filed by the petitioner is not tenable. The material points required for election petition are not disclosed in the petition. Thus, there is Breach of proviso 2 to Section 83 of the Act of 1951. Similarly the true copy is not signed by the petitioner and therefore, there is breach of mandatory provisions of Sec. 81 (3) of the Act of 1951. It is further submitted by respondent No. 3 that there was no direction either from the Election Commission of India, New Delhi or from the Chief Electoral Officer Maharashtra State, Mumbai and therefore, using the word Congress (I) does not amount to violation of Code of Conduct to election. It is prayed that the election petition filed by the petitioner be dismissed with costs.

6. The main contesting respondent No. 3 has filed his written statement at Exh. 10. It is contended that the petition filed by the petitioner is liable to be dismissed for non-compliance of the provisions laid down under section 81 of the Act of 1951. It is further stated that the election petition is not in compliance with the provisions of section 83 of the Act of 1951 and therefore, it is liable to be dismissed. A grievance is made by the respondent No. 3 that the averments made in the election petition are extremely vague and do not at all disclose the cause of action necessary for filing the election petition. The respondent No. 3 has also made a grievance that the petition does not contain concise statement of material facts for the purpose of making out grounds under sub-section (1) of section 100 of the Act of 1951 and therefore the election petition cannot be considered. The respondent No. 3 states that the petition is liable to be dismissed for non-compliance of the provisions laid down under section 100 (1) (d) clause (iv) of the Act of 1951.

7. The respondent No. 3 has raised an objection with regard to verification of the petition. As he says that the verification of the petition is not in accordance with the provisions of the Civil procedure Code and, therefore, the petition is liable to be dismissed. The respondent No. 3 has further pointed out a defect in the affidavit annexed with the copy of the election petition. According to the respondent No. 3 the affidavit is not legal, proper and in conformity with the provisions laid down under section 83 (1) (C) of the Act of 1951. The affidavit contemplated under the provisions of the Act of 1951 should be in the form No. 25, which is provided by Rule No. 94-A of the Conduct of Elections Rules, 1961. The respondent No. 3 has also challenged the maintainability of the election petition on the ground of limitation. The respondent No. 3 states that the election petition in all respects shows removal of objections on 25-7-1996 i.e. after expiry of the period of 45 days of limitation. Therefore, the election petition is barred by limitation. The respondent No. 3 has specifically denied that the party under the leadership of Shri P. V. Narsimha Rao was directed not to use the word-Congress (I). It is denied that the respondent No. 3 has committed breach of Code of Conduct.

8. The respondent No. 3 contends that bye election of 39-Ahmednagar South Parliamentary Constituency had taken place in the year 1994 and at that time also, the petitioner had filled in his nomination paper and contested the election. The respondent No. 3 had also contested he said bye-election and was declared elected by securing 1,98,223 votes. The petitioner, at that time, had secured only 2,032 votes. The petitioner thus has nursed a serious grudge against the respondent No. 3 and therefore, has filed this election petition to harass him. The respondent No. 3 states that the petition is frivolous and vexatious and, therefore, he is entitled for compensatory costs of Rs. 25,000/- The respondent No. 3 finally prays that the election petition filed by the petitioner be dismissed with costs.

9. Neither any allegations are made nor any relief is claimed against the respondent No. 2. The respondent No. 2 is not a necessary party.

10. On the above pleadings of the parties following issues are framed at Exh. 26 and the findings recorded against each of the issues are as under :

ISSUES

FINDINGS

(1) Whether petitioner proves that the respondent No. 2 had given specific direction to the effect that the party under leadership of Shri P. V. Narsimha Rao should not use the word Congress (I) ?	No.
(2) Whether petitioner proves that the respondent No. 3 deliberately committed breach of above direction issued by the respondent No. 2 ?	No.
(3) Whether the petitioner proves that the respondent No. 3 has committed violation of Conduct of Election Rules?	No.
(4) Whether respondent No. 3 proves that the Election petition is liable to be dismissed for non-compliance of mandatory provisions laid down under sub-sec. (3) Sec. 81 and sub-sec. (1)(c) and sub-sec. (2) of sec. 83 of the Representation of People Act, 1951 ?	No.
(5) Whether Election Petition is within limitation ?	Yes.
(6) Whether respondent No. 3 proves that the Election Petition is false and frivolous to the knowledge of the petitioners ? If yes, whether respondent No. 3 is entitled for compensatory costs of Rs. 25,000/- ?	Does not survive.
(7) What relief and costs ?	As per final order.

11. As to Issues Nos. 1 to 3.—In order to prove the averments made in the election petition the petitioner examined himself at Ext. 39. He has not examined any other witness. The petitioner has brought on record the orders passed by the Chief Election Commissioner of India. The Annexure "A" at Exh. 40 is in respect of dispute Case No. 1 of 1996. It appears that the jurisdiction of the Election

Commission was invoked under para No. 15 of the Election Symbols (Reservation and Allotment) order, 1968 for determining the question as to who constitutes the Indian National Congress. Initially the symbol of Hand reserved for Indian National Congress was chosen by Shri T. N. Shesan, Chief Election Commissioner of India by order dtd. 11-3-1996. Annexure "B" at Exh. 41 is the decision in Dispute case No. 1 of 1996 by majority. It appears from Annexure "B" that prayer to choose the reserved symbol of Hand of Indian National Congress has been rejected by the Bench consisting of Shri M. S. Gill, Election Commissioner and Shri G. V. G. Krishna Murthi, Election Commissioner. By this majority decision, the Indian National Congress is allowed to enjoy its rights and privileges as registered and recognised as national party.

12. Besides the above referred to documents the petitioner has brought on record the hand bill on the basis of which the present election petition is mainly founded. On careful perusal of Annexures A and B it is seen that these are not the certified copies. Under the circumstances, no reliance can be placed on these two documents. The petitioner has not examined the owner of Datta Printing Press in order to prove that the respondent No. 3 got printed the hand bills in question. It is also not proved by the petitioner that the hand bill which is brought on record was obtained by the petitioner from the office of Collector, Ahmednagar. Under the circumstances, the hand bill which is brought on record, is not liable to be admitted in evidence and cannot be acted upon.

13. There is absolutely no evidence on record to show that the Election Commission of India had given specific directions to the party under the leadership of Shri P. V. Narsimha Rao that the Indian National Congress should not use the word "Congress (1)". In fact there was no such direction from the Election Commission of India. The Returning Officer i.e. respondent No. 1 has thrown sufficient light on this aspect of the matter. In para No. 9 of the written statement Exh. 4, the Returning Officer i.e. respondent No. 1 has made it clear that the Election Commission of India had not issued any direction prohibiting the use of word Congress (1). From perusal of the testimony of the petitioner, it is seen that the present election petition has been founded on the information collected by the petitioner from the newspaper Sarvamati and no the basis of Radio news. It is material to note that the petitioner has not taken any pain to produce the copy of the newspaper Sarvamati. The petitioner was driven to admit in the cross examination that he did not even show the newspaper Sarvamati to his lawyer at the time of drafting of the election petition.

14. On the basis of this type of weak evidence, the petitioner is not entitled to get any relief. The petitioner has miserably failed to establish that the respondent No. 3 has committed breach of any direction issued by the Election Commission of India. The Petitioner has also miserably failed to prove that the respondent No. 3 has violated Conduct of Election Rules.

15. The learned counsel Shri Deshmukh for respondent No. 3 has rightly pointed out that the present petitioner has not made out any ground for the purpose of declaration of election of respondent No. 3 to be void. For this purpose, he brought to my notice section 100 of the Act of 1951. Section 100 of the Act speaks of the grounds for declaring the election to be void. It is not the case of the petitioner that the respondent No. 3 was not qualified or was disqualified. No corrupt practice is alleged against respondent No. 3 or his election agent. The grounds set out in the election petition for the purpose of declaring election of respondent No. 3 to be void do not fall within the ambit of grounds enumerated in section 100 of the Act of 1951. No case is made out for setting aside the election of respondent No. 3. In view of this position, the present election petition filed by the petitioner is liable to be dismissed, I therefore, answer issues Nos. 1 to 3 in the negative.

16. As to Issue No. 4.—There is no serious challenge on behalf of respondent No. 3 in the matter of compliance of mandatory provisions laid down under sub-sec. (3) of sec. 81 and sub-section (1)(c) and (2) of sec. 83 of the Act of 1951. There is substantial compliance of mandatory provisions referred above. Under the circumstances, I answer issue No. 4 in the negative.

17. As to Issue No. 5.—Admittedly the election results were declared on 10-5-1996. The election petition has been presented by the petitioner in person before the Additional Registrar of this Court on 24-6-1996. If the date of declaration of results and the date of presentation of the petition before the Additional Registrar of this Court are taken into account, it prima facie appears that the election petition is filed within limitation. Hence, issue No. 5 is answered in the affirmative.

18. As to Issue No. 6.—The respondent No. 3 has not led any oral evidence. On the basis of evidence that has been brought on record by the petitioner it cannot be said that the election petition is false and frivolous. It appears that the petitioner was misled by the news in the newspaper. Under the circumstances, I answer issue No. 6 in the negative.

19. As to Issue No. 7.—The election petition is liable to be dismissed and, therefore, the petitioner is not entitled to get any relief. In the result I pass the following order.

The Election Petition is dismissed with costs of the returned candidate i.e. the respondent No. 3. The petitioner is hereby directed to pay Rs. 5000/- to the respondent No. 3 by way of costs of this Election Petition. The security deposit of Rs. 2,000/- deposited by the petitioner is liable to be appropriated towards the costs of the Election Petition. The petitioner is, therefore, liable to pay remaining costs of Rs. 3,000/- to the respondent No. 3.

20. The office is directed to intimate the substance of this decision to the Election Commission of India and the Speaker of the House of Parliament. The office is further directed to send to the Election Com-

mission of India an authenticated copy the decision of this Election Petition.

December 22, 1999.

Sd/-

B. B. VAGYANI, J. J.
Assistant Registrar
[No. 82/MT-HP/4/96 (Aurangabad)]
By Order,
C. R. BRAHMAM, Secy.

नई दिल्ली, 16 मई, 2000

आ. अ. 60.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग उड़ीसा सरकार के परामर्श से एतद्वारा श्री ए. एस. सारंगी आई ए एस के स्थान पर श्री एल. किंडो, आई ए एस (ओर आर-73) को उनके कार्यभार ग्रहण करने की तारीख से आगामी ग्रादेशों तक के लिए, उड़ीसा राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामित करता है।

2. श्री एल. किंडो उड़ीसा सरकार के अधीन सभी पदभार या किसी कार्य के पदभारों को तत्काल सौंप देंगे या धारण करना समाप्त कर देंगे, जो कि वे ऐसा पदभार ग्रहण करने से पहले धारण कर रहे थे।

3. श्री एल. किंडो मुख्य निर्वाचन अधिकारी, उड़ीसा के रूप में कार्य करते हुए उड़ीसा सरकार के अधीन किसी भी प्रकार का कोई अतिरिक्त कार्यभार ग्रहण नहीं करेंगे सिवाय इसके कि उनके राज्य सचिवालय में निर्वाचन विभाग के प्रभारी, सरकार का सचिव पदाधिकृत किया जायेगा।

[सं. 154/उड़ीसा/2000-का.प्रशासन]

आदेश से,

ए० एन० झा, निदेशक (प्रशासन) एवं प्रधान सचिव

New Delhi, the 16th May, 2000

O.N. 60.—In exercise of the power conferred by sub-section (1) of section 13A of the Representation of the People Act 1950 (43 of 1950) the Election Commission of India in consultation with Government of Orissa hereby nominates Shri L. Kindo, IAS (OR-73), as the Chief Electoral Officer for the State of Orissa with effect from the date he takes over charge and until further orders vice Shri A. S. Sarangi, IAS.

2. Shri L. Kindo shall cease to hold and hand over forthwith the charge of all or any charges of work under the Government of Orissa, which he may be holding before such assumption of office.

3. Shri L. Kindo while functioning as the Chief Electoral Officer, Orissa shall not hold any additional charge whatsoever under the Government of Orissa except that he should be designated Secretary to the Government in charge of Election Department in the State Secretariat.

[No. 154/OR/2000-P. Admn.]

By order,

A. N. JHA, Director (Admn.)-Cum-Principal Secy.